IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

RCRev..No. 235 of 2007

R.C.A.NO.21/2004 OF THE RENT CONTROL APPELLATE AUTHORITY,PALAKKAD,
R.C.P. NO.1/2004 RENT CONTROL COURT (MUNSIFF), OTTAPPALAM.
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REIVISON PETITIONER/APPELLANT/RESPONDENT:

MANI EMBRADIRI, S/O.NARAYANA SWAMY,
PROPRIETOR, HOTEL ANAND BHAVAN,
SHOP ROOM NO.1/1045, K.N.M.SHOPPING COMPLEX,
CHERPULASSERY, OTTAPPALAM TALUK.

BY ADV. SRI.C.KHALID,
SRI.B.G.BHASKAR,
SRI.N.GOPINATHA PANICKER,
SRI.R.O.MUHAMED SHEMEEM,
SRI.T.P.SAJID,
SMT.M.A.SULFIA.

RESPONDENT/RESPONDENT/PETITIONER:

KERALA NADUVATHUL MUJAHIDEEN SOCIETY,
REPRESENTED BY ITS GENERAL SECRETARY,
A.P.ABDUL KHADER MOULAVI,
S/O.LATE SAINUDEEN, ADATHIPARAMBIL HOUSE,
EDAVANNA AMSOM, ERANAD TALUK.

BY ADV. SRI.V.V.ASOKAN,
ADV. SMT.S.LAKSHMY.

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 24/09/2007, ALONG WITH R.C.R. NO. 239/2007 AND CONNECTED CASES,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.BALAKRISHNAN NAIR & T.R.RAMACHANDRAN NAIR, JJ.

RCR Nos.235,237,239,240,289,290,291,292,293 & 294 of 2007

Order

Balakrishnan Nair, J.

RCR NO.235/07

The tenant is the revision petitioner and the landlord is the respondent. The landlord moved for eviction of the tenanted room under Section 11(2)(b) of the Kerala Buildings (Lease and Rent Control) Act, 1965. The tenant set up a plea, denying the title of the landlord. The said issue was tried as a preliminary point by the Rent Controller and it was held that the denial of title was without bona fides. The tenant appealed. The appellate authority affirmed the said decision. Hence this Revision.

2.The landlord is a Society, registered under the Societies Registration Act. It is represented by its General Secretary in this proceedings. The Cherplasseri unit of the landlord Society rented out to the revision petitioner the room which is part of a shopping complex. The rent was being collected also by the local unit. It appears, some dispute arose between the landlord and the local unit. According to the tenant, the rent was being regularly paid by him

to the local unit, which was being collected by it regularly. But, according to the landlord, after 01.02.2002, no rent was paid by the tenant. Therefore, after issuing the notice, the petition under Section 11(2)(b) of the Act for eviction was filed.

3. As per the counter statement of the tenant, the local unit was the landlord. The tenant executed the rent deed in favour of the local unit. It was regularly collecting the rent and the same was being paid. So, the local unit of the Society is the landlord. Therefore, the RCP filed by the parent Society is not maintainable. They denied the very title of the landlord to seek eviction under Section 11(2)(b). When this preliminary point was tried, from the side of the landlord, Exts.A1 to A12(b) were marked and from the side of the tenant, Ext.B1 was marked. As mentioned earlier, considering the materials on record, the Rent Controller upheld the title of the landlord Society. Before the appellate authority, the title of the landlord was challenged, mainly on two grounds. Firstly, it was contended that the ownership of the shopping complex called KNM Complex, Cherplasseri belongs to the local unit. Secondly, it was contended that the local unit let out the room to the tenant and therefore, the

local unit alone is the landlord. The appellate authority considered the evidence on record and repelled both the contentions. It is common case that the land in which the building is constructed, belongs to the landlord Society. The communications between the local unit and the parent Society were produced in evidence. Ext.A3 is one of them. The same would show that the local unit was collecting the rent and forwarding the same to the landlord. Of course, a portion of it was being retained by the local unit. The details regarding the rent collected, the arrears of rent remaining unpaid etc., were being properly accounted to the parent body. The landlord Society was being posted with the facts concerning the details of the tenants occupying the various rooms also. Based on these materials, it was held that the local unit is only an agent and the landlord Society, which filed the RCP was the Principal. So, it was held that the building also belongs to the said Society. The contention of the tenant that the principle in English Law that the building belongs to the owner of the land, is not applicable in India, was also considered by the appellate authority. The appellate authority did not rely on

any presumption of law, but, based on the materials on record, which showed that except a portion, the entire rent was being paid to the landlord, held that the landlord is the parent Society. We feel that the said view taken by both the authorities is a plausible view on the facts, with which, we cannot interfere under Section 20 of the Act.

4. In this Revision, it was contended that the General Secretary, who claims to represent the Society, has been ousted from office and somebody else is elected in his place. We heard the learned counsel appearing for the Society also on this point. It is common case that the dispute as to who is competent to represent the parent society is pending before the civil court. We notice that the landlord is the Society and therefore, if the present person is not competent to represent it, the person found competent to do that by the Civil Court, will naturally step in. The tenant cannot take advantage of the said dispute. He has to pay rent to the Society concerned, whether it is represented by A or B. In view of the above position, we are affirming the view taken by the authorities below that the denial of title made by the tenant is not bona fide and

therefore, the matter need not be sent to the civil court. We make it clear that this Judgment will not stand in the say of the competent civil court, adjudicating the claims of the rival parties concerning the right to represent the Society. Subject to this observation, the RCR is dismissed.

RCR Nos.237,239,240,289,290,291,292,293 & 294 of 2007

5. In view of the dismissal of RCR No.235/07, these Revisions are also dismissed as the same point arises for decision in these cases also.

K.BALAKRISHNAN NAIR,JUDGE

24.09.2007 **T.R.RAMACHANDRAN NAIR, JUDGE**

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